

Regular Session, 2004

ACT No. 736

SENATE BILL NO. 877 (Substitute for Senate Bill No. 511 by Senator Ellington)

BY SENATORS ELLINGTON AND MICHOT AND REPRESENTATIVES PINAC AND
WALSWORTH

1 AN ACT

2 To enact Chapter 8-K of Title 45 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 45:844.40 through 844.54, relative to telecommunications; to create the
4 "Local Government Fair Competition Act"; to provide for legislative findings; to
5 provide for definitions; to provide limitations for providing certain cable television,
6 telecommunications, and advanced services; to establish procedures for offering
7 certain cable television, telecommunications, and advanced services; to provide for
8 public hearings; to provide certain quality of service standards; to provide for
9 enforcement and appeal; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 8-K of Title 45 of the Louisiana Revised Statutes of 1950, to be
12 comprised of R.S. 45:844.40 through 844.54, is hereby enacted to read as follows:

13 CHAPTER 8-K. LOCAL GOVERNMENT FAIR COMPETITION ACT

14 **Chapter 8-K of Title 45 is all new law.**

15 §844.40. Short title

16 **R.S. 45:844.40 is all new law.**

17 This Act shall be known and may be cited as "The Local Government Fair
18 Competition Act."

19 §844.41. Legislative findings and declarations of intent

20 **R.S. 45:844.41 is all new law.**

21 The legislature finds and declares that it is the policy of this state:

22 (1) To ensure that cable television services and telecommunications and
23 advanced services are provided through fair competition consistent with the federal

1 Telecommunications Act of 1996, Pub. L. 104-104, in order to provide the widest
2 possible diversity of information and news sources to the general public.

3 (2) To advance the exercise of rights under the First Amendment of the
4 Constitution of the United States.

5 (3) To enhance the development and widespread use of technological
6 advances in providing cable television services and telecommunications and
7 advanced services.

8 (4) To encourage improved customer service of cable television services and
9 telecommunications and advanced services at competitive rates.

10 (5) To ensure that cable television services and telecommunications and
11 advanced services are each provided within a consistent, comprehensive, and
12 nondiscriminatory federal, state, and local government framework.

13 (6) To ensure that when a local government provides to its inhabitants cable
14 television services, telecommunications services or advanced services, or any
15 combination thereof, and competes with private providers whose activities are
16 regulated by the local governmental entity, the local government does not
17 discriminate against the competing providers of the same services.

18 (7) To ensure that when a local government provides to its inhabitants cable
19 television services, telecommunications services or advanced services, or any
20 combination thereof, it will not be precluded from engaging in "bundling" those
21 services or engaging in any other lawful business practice that its private-sector
22 competitors are legally permitted to engage in.

23 §844.42. Definitions

24 **R.S. 45:844.42 is all new law.**

25 As used in this Chapter, the following terms and phrases shall have the
26 meanings hereinafter ascribed to them:

27 (1) "Advanced service" means high-speed Internet access capability in excess
28 of 144 kilobits per second both upstream and downstream.

29 (2) "Cable television service" means:

1 (a) The one-way transmission to subscribers of video programming or other
2 programming service.

3 (b) Subscriber interaction, if any, that is required for the selection or use of
4 the video programming or other programming service.

5 (3) "Capital costs" means all costs of providing a service that are capitalized
6 in accordance with generally accepted accounting principles.

7 (4) "Commercially sensitive marketing information" means marketing plans
8 or strategies, customer lists, and trade secrets pursuant to R.S. 51:1431.

9 (5) "Cost allocation plan" means a formally adopted procedure for allocating
10 direct and indirect costs, which is developed in accordance with rules and regulations
11 promulgated by the Louisiana Public Service Commission.

12 (6) "Covered services" means telecommunications services, advanced
13 services and cable television services, individually and collectively, and regardless
14 of the technology used to provide those services, unless otherwise specified in this
15 act.

16 (7) "Cross subsidize" means to pay a cost included in the direct costs or
17 indirect costs of providing a covered service that is not accounted for in the full cost
18 of accounting of providing the service, other than the payment of Start-up costs.

19 (8) "Direct costs" means those expenses of a local government that:

20 (a) Are directly attributable to providing a covered service.

21 (b) Would be eliminated if the service described in Subsection (8)(a) were not
22 provided by the local government.

23 (9) "Enterprise fund" means a separate fund to account for the local
24 government's operations of covered services, established and maintained in
25 accordance with generally accepted accounting principles as described by the
26 Governmental Accounting Standards Board (GASB).

27 (10) "Examination" means an attestation performed for the purpose of
28 expressing an opinion on an assertion that is the responsibility of another party in
29 accordance with "Statements on Standards for Attestation Engagements" published

1 by the American Institute of Certified Public Accountants.

2 (11) "Feasibility consultant" means an individual or entity with expertise in
3 the processes and economics of providing covered services.

4 (12) "Full costs" means all capital costs, direct costs and indirect costs.

5 (13)(a) "Full-cost accounting" means the accounting of all costs incurred by
6 a local government in providing a covered service.

7 (b) The costs included in a full-cost accounting include all capital costs, direct
8 costs and indirect costs.

9 (14)(a) "Indirect costs" means any costs:

10 (i) Identified with two or more services or other functions.

11 (ii) That are not directly identified with a single service or function.

12 (b) "Indirect costs" may include cost factors for administration, accounting,
13 personnel, purchasing, legal support, and other staff or departmental support.

14 (15) "Local governing authority" means the legislative body of a local
15 government.

16 (16) "Local government" means any parish, municipality, or other political
17 subdivision of the state and any utility authority, board, branch, department or other
18 unit thereof.

19 (17) "Private provider" means a person that:

20 (a) Provides a covered service.

21 (b) Is a private entity.

22 (18) "Start-up costs" means those costs reasonably and prudently incurred by
23 the local government (including legal and professional services) in obtaining the
24 feasibility study required under this Part, in seeking to obtain assent of the financial
25 market place for funding the proposed project, and other related costs through the
26 closing of the sale of the bonds or other financing vehicles supporting the
27 provisioning of covered services, and specifically excludes capital costs as defined
28 herein.

29 (19) "Telecommunications service" means the two-way transmission of signs,

1 signals, writing, images, sounds, messages, data, or other information of any nature
2 by wire, radio, light waves, or other electromagnetic means offered to the public
3 generally.

4 (20)"Subscribers" means a person that lawfully receives a covered service.

5 §844.43. Antitrust immunity

6 **R.S. 45:844.43 is all new law.**

7 A. Subject to the provisions of Subsection B, when a local government is
8 offering or providing a covered service, any immunity from antitrust law afforded to
9 political subdivisions of the state does not apply to the local government's actions
10 associated with the provision of those services.

11 B. A local government that provides a covered service is subject to applicable
12 antitrust liabilities, if any, only to the extent permitted under the federal Local
13 Government Antitrust Act of 1984, 15 U.S.C. Secs. 34 to 36.

14 §844.44. Scope of Chapter

15 **R.S. 45:844.44 is all new law.**

16 A. Nothing in this Chapter shall authorize any local government to:

17 (1) Provide a covered service.

18 (2) Purchase, lease, construct, maintain, or operate a facility for the purpose
19 of providing a covered service.

20 B. Nothing in this Chapter shall apply to a local government purchasing,
21 leasing, constructing or equipping facilities:

22 (1) That are designed to provide services within the city or parish or both.

23 (2) That the local government:

24 (a) Uses for internal local governmental purposes.

25 (b) By written contract, leases, sells capacity in, or grants other similar rights
26 to a private provider to use the facilities in connection with a private provider
27 offering a covered service.

28 §844.45. Severability

29 **R.S. 45:844.45 is all new law.**

1 If any provision of this Chapter or the application thereof to any person or
2 circumstance is held invalid, the invalidity does not affect other provisions or the
3 application of this Chapter that can be given effect without the invalid provision or
4 application, and to this end the provisions of this Chapter are severable.

5 §844.46. Limitations on providing a cable television and telecommunications and
6 advanced services

7 **R.S. 45:844.46 is all new law.**

8 A. Except as provided in this Chapter, a local government may not:

9 (1) Provide to one or more subscribers a covered service.

10 (2) For the purpose of providing a covered service to one or more subscribers,
11 purchase, lease, construct, maintain, or operate any facility.

12 B. For purposes of this Chapter, a local government provides a covered
13 service if the local government provides the service:

14 (1) Directly or indirectly, including through an authority or instrumentality
15 acting on behalf of the local government; or for the benefit of the local government.

16 (2) By itself.

17 (3) Through a partnership or joint venture.

18 (4) By contract, resale, or otherwise.

19 §844.47. Requirements prior to local governmental entity providing cable television
20 or telecommunications or advanced services

21 **R.S. 45:844.47 is all new law.**

22 Prior to a local government engaging or offering to engage in an activity
23 described in this Chapter, the local governing authority shall:

24 (1) Hold a preliminary public hearing.

25 (2) If the local governing authority elects to proceed after holding the
26 preliminary public hearing required by this Section, approve the hiring of a feasibility
27 consultant to conduct a feasibility study in accordance with R.S. 45:844.48.

28 (3) Determine when under the feasibility study conducted under R.S.
29 45:844.48, the annual revenues under R.S. 45:844.48(2)(d) exceed the annual costs

under R.S. 45:844.48(2)(d) by at least the amount necessary to meet the bond obligations of any bonds issued to fund the proposed covered service.

(4) If the conditions of Paragraph (3) of this Section are met, hold the public hearings required by R.S. 45:844.48.

(5) After holding the public hearings required by R.S. 45:844.48, if the local governing authority elects to proceed, adopt by resolution the feasibility study.

§844.48. Feasibility study; public hearings

R.S. 45:844.48 is all new law.

(1) If a feasibility consultant is hired under R.S. 45:844.48, the local governing authority shall require the feasibility consultant to:

(a) Complete the feasibility study in accordance with this Section.

(b) Submit to the local governing authority by no later than one hundred-eighty days from the date the feasibility consultant is hired to conduct the feasibility study:

(i) The full written results of the feasibility study.

(ii) A summary of the results that is no longer than one page in length.

(c) Attend the public hearings described in Paragraph (4) of this Section to:

(i) Present the feasibility study results.

(ii) Respond to questions from the public.

(2) The feasibility study described in Paragraph (1) of this Section shall at a minimum consider:

(a) If the local government is proposing to provide covered services to subscribers, whether the local government providing covered services in the manner proposed by the local government will hinder or advance competition for covered services in the city or parish.

(b) The fiscal impact on the local government of:

(i) The capital investment in facilities that will be used to provide the proposed covered services.

(ii) The expenditure of funds for labor, financing, and administering the

1 proposed covered services.

2 (c) The projected growth in demand in the city or parish or both for the
3 proposed covered services.

4 (d) The projections at the time of the feasibility study and for each year until
5 the bonds necessary to finance the facilities used to provide covered services are
6 retired, of the revenues and full costs for a local government to purchase, lease,
7 construct, maintain, or operate the facilities necessary to provide the proposed
8 covered services.

9 (3) For purposes of the financial projections required under Subparagraph
10 (2)(d), the feasibility consultant shall assume that the local government will price the
11 proposed covered services consistent with R.S. 45:844.52(4).

12 (4) If the results of the feasibility study satisfy the revenue requirement of
13 R.S. 45:844.47(3), the local governing authority, at the next regular meeting after the
14 local governing authority receives the results of the feasibility study, shall schedule
15 at least two public hearings to be held:

16 (a) Within sixty days of the meeting at which the public hearings are
17 scheduled.

18 (b) At least seven days apart.

19 (c) For the purpose of allowing the feasibility consultant to present the results
20 of the feasibility study; and the public to become informed about the feasibility study
21 results; and ask questions of the feasibility consultant about the results of the
22 feasibility study.

23 (5)(a) Except as provided in Subparagraph(5)(c), the local government shall
24 publish notice of the public hearings required under Paragraph(4) at least once a
25 week for three consecutive weeks in a newspaper of general circulation in the city or
26 parish or both.

27 (b) The last publication of notice required under Subparagraph(5)(a) shall be
28 at least three days before the first public hearing required under Paragraph(4).

29 (c)(i) If there is no newspaper of general circulation in the city or parish, for

each one thousand residents, the local government shall post at least one notice of the hearings in a conspicuous place within the city or parish or both that is likely to give notice of the hearings to the greatest number of residents of the city or parish.

(ii) The local government shall post the notices at least seven days before the first public hearing required under Paragraph (4) is held.

(6) A local government that has existing notice and hearing procedures under a home rule charter for considering and approving capital projects for local government to construct and operate facilities for the provision of covered services shall be permitted to use those notice and hearing procedures in lieu of the notice and hearing procedures set forth in R.S. 45:844.48, provided that the notice and hearing procedures contain requirements that are substantially similar to those set forth herein.

(7) Nothing in this Section shall be construed to require inclusion in the feasibility study required herein, or disclosure of, commercially sensitive marketing information.

§844.49. Referendum

R.S. 45:844.49 is all new law.

A. A local governing authority by a majority vote may call an election on whether or not the local government shall provide the proposed covered services.

B. If the local governing authority calls an election, the election shall be held:

(1)(a) At the next local government general election; or

(b) As provided in Title 18 of the Louisiana Revised Statutes of 1950 at a local special election, the purpose of which is authorized by this Section.

(2) In accordance with Title 18 of the Louisiana Revised Statutes of 1950 except as provided in this Section.

C. The notice of the election shall include with any other information required by law:

(1) A summary of the covered services that the local governing authority proposes to provide to subscribers residing within the boundaries of the local

1 government.

2 (2) The feasibility study summary under R.S. 45:844.48.

3 (3) A statement that a full copy of the feasibility study is available for
4 inspection and copying.

5 (4) The location in the city or parish or both where the feasibility study may
6 be inspected or copied.

7 D. The ballot at the election shall pose the question substantially as follows:

8 'Shall the [name of the local government] be authorized to provide
9 [cable television service or telecommunications or advanced service].'

10 E. The ballot proposition may not take effect until submitted to the electors
11 and approved by the majority of those voting on the ballot.

12 F. A local governing authority that has existing procedures on whether,
13 when, and how to conduct referenda shall utilize those procedures in lieu of the
14 procedures set forth in R.S. 45:844.49, provided that the procedures for conducting
15 referenda contain notice and hearing requirements that are substantially similar to
16 those set forth herein.

17 G. In the event the local governing authority does not have existing
18 procedures on whether, when, and how to conduct referenda, it shall utilize the
19 following procedures:

20 (1) Upon the valid petition of not less than fifteen percent of or ten thousand,
21 whichever is lesser, of the qualified electors of a local government, submitted to the
22 registrar of voters for verification within one hundred eighty days of submission of
23 the feasibility study to the local governing authority, the local governing authority
24 shall order a referendum election to be held to determine whether or not the local
25 government may offer or provide covered services.

26 (2)(a) Any qualified elector desiring a referendum election shall sign a
27 petition addressed to the local governing authority of the local government in which
28 he resides, and in substantially the following form:

29 PETITION

1 TO: [Name of local government]

2 The undersigned qualified electors respectfully request that you call an
3 election to submit, in the manner provided by law, to the qualified electors
4 of [name of local government] the following proposition:

5 Shall the [name of the local government] be authorized to offer or provide
6 cable television, telecommunications, or advanced services?

7 Signature: _____

8 Address: _____

9 Date: _____,

10 (b) Where signatures are made on more than one sheet, each sheet of the
11 petition shall reproduce above the signatures in the same manner as is on the first
12 sheet. Each petitioner shall sign his name in his own handwriting and shall write his
13 address and the date on which he signed, otherwise his signature shall be null and
14 void. If an elector cannot sign his name because of age or physical condition, he may
15 have his name and address and the date written by another and shall affix his ordinary
16 "X" mark in the presence of two competent electors, who shall sign their names as
17 witnesses to the mark.

18 (3) The petition shall be filed with the registrar of voters within ninety days
19 after the date on which the first signature was affixed. The petition, when so filed,
20 becomes a public record and cannot be returned to the proponents or signers thereof.

21 (4) The registrar of voters shall check the petition and attach thereto his sworn
22 verification showing:

23 (a) The date the petition was filed.

24 (b) The date of the first signature of the petition.

25 (c) The number of qualified electors of the parish or municipality on the
26 registration rolls as of the date of the first signature on the petition, which date shall
27 be used by the registrar in ascertaining if the petition contains the required number
28 of signatures.

29 (d) That he has checked each signature for its genuineness by comparing the

1 signature on the petition with the signature of the same person on the registration
2 rolls.

3 (e) The total number of genuine signatures of qualified electors on the
4 petition.

5 (f) The number of signatures not genuine, or not signed and written in the
6 manner required by R.S. 45:844.49(G)(2).

7 (5) Within thirty days, excluding Saturdays, Sundays, and holidays, from the
8 date the petition was filed with the registrar of voters, the registrar shall file a true
9 copy of the sworn verification required in Paragraph (4) of this Subsection with the
10 local governing authority charged with the duty of calling the election.

11 (6) Any person whose signature appears on a local option petition and who
12 alleges that such signature is not genuine is hereby authorized to execute and file
13 with the registrar of voters, a sworn affidavit, attesting that the affiant did not sign
14 the petition. The registrar of voters, when checking the signatures for genuineness,
15 shall take the affidavit into consideration, but in no instance shall he certify the
16 signature not to be genuine, unless the comparison of the signatures indicates that the
17 signature is indeed not genuine. Affidavits executed pursuant to this Subsection shall
18 be subject to the perjury provisions of Title 14 of the Louisiana Revised Statutes.

19 (7)(a) The clerk of the local governing authority with whom the petition is
20 filed by the registrar of voters shall attach to the petition its sworn verification
21 showing the date, month, and year the petition was filed with it.

22 (b) If the petition conforms to all the provisions of R.S. 45:844.49(G), the
23 local governing authority shall order the election. The ordinance or resolution of the
24 local governing authority ordering the election shall be adopted at a regular meeting
25 held not less than thirty nor more than forty-five days after the date the petition was
26 filed with the local governing authority by the registrar of voters.

27 (c) The local governing authority shall remove the name of any signer of the
28 petition if requested to do so in writing within thirty days after the date the petition
29 was filed with it. If the number of written requests for withdrawal from the petition

reduces the number of qualified petitioners to less than the number required by R.S. 45:844.49(G)(1) the election shall not be ordered and the petition shall be null and void and cannot be used again.

(d) The date fixed for the election shall be not less than forty-five nor more than sixty days after the date of the adoption of the ordinance or resolution ordering the election.

(8)(a) When such election has been ordered the following propositions requested to be submitted on the approved and verified petition required by this Chapter, and no others shall be plainly printed upon a special ballot to be used for the election, otherwise the election shall be null and void:

‘Shall the [name of local government] be authorized to provide [cable television service or telecommunications or advanced service].’

(b) In an election a majority vote cast on the proposition shall determine that issue for the local government that has called the election.

(9) The election called shall be governed by the Louisiana Election Code, R.S. 18:401, et seq.

(10) If the petition fails to substantially comply with the requirements provided for by law or if the other requirements specified by the law for the calling or conduct of the election are not substantially complied with, the election is illegal and ineffective and may be declared null and void by any court of competent jurisdiction at the suit of any elector who was qualified to vote in the election. This suit shall be brought within thirty days of the promulgation of the results of the election.

(11) The local governing authority calling the election shall promulgate the result by resolution or ordinance adopted at its first regular meeting after the election and shall publish it in the official journal of the parish.

§844.50. Enterprise funds for cable television or telecommunications or advanced services

R.S. 45:844.50 is all new law.

1 A. A local government that provides one or more covered services under this
2 Chapter:

3 (1) Shall establish a single enterprise fund entitled the "communications
4 services enterprise fund" to account for the local government's operations of covered
5 services.

6 (2) Shall adopt operating and capital budgets for the local government's
7 covered services.

8 (3) Except as provided in R.S. 45:844.51(C)(2), or subject to rules
9 established under to R.S. 45:844.54(D), may not transfer any appropriation or other
10 balance in any other enterprise fund established by the local government to any
11 enterprise fund established by the local government under this Section.

12 B. The restrictions on transfers described in Paragraph (A)(3) do not apply
13 to transfers made by a local government between other enterprise funds established
14 by the local government.

15 §844.51. Bonding authority

16 **R.S. 45:844.51 is all new law.**

17 A. The local governing authority may by resolution determine to issue one
18 or more bonds to finance the capital costs for facilities necessary to provide to
19 subscribers one or more covered services.

20 B. The resolution shall:

21 (1) Describe the purpose for which the indebtedness is to be created.

22 (2) Specify the dollar amount of the one or more bonds proposed to be issued.

23 C.(1) A bond issued under this Section shall be secured and paid for solely
24 from the revenues generated by the local government from providing the covered
25 services.

26 (2) A local government may not pay the origination, financing, or other
27 carrying costs associated with the one or more bonds issued under this Section from
28 the general funds or other enterprise funds of the local government. Nothing in this
29 Section shall preclude a local government from using the general funds or other

enterprise funds to advance funds for the feasibility study prescribed under R.S. 45:844.48 or for start-up costs for the proposed venture, provided that any such funds advanced are repaid by the enterprise fund established under this R.S. 45:844.50 at interest rates and on terms and conditions available to private enterprises in the open market.

(3) Nothing in this Act shall preclude a local government that owns and operates electric, water, gas, sewer and other utilities from pledging the resources of such utilities to obtain the best available interest rates, terms and conditions for the bonds necessary to finance the facilities used to provide the proposed covered services.

(4) Nothing under this Section provides a local governing authority bonding authority in addition to that provided under existing state law.

§844.52. General operating limitations

R.S. 45:844.52 is all new law.

(1) A local government that provides a covered service under this Chapter is subject to all applicable provisions of local, state and federal law, including applicable rules of the Louisiana Public Service Commission.

(2) A local government may not cross-subsidize its covered services with tax dollars, income from other local government or utility services, below-market rate loans from the local government or any other means.

(3)(a) A local government may not make or grant any undue or unreasonable preference or advantage to itself or to any private provider of covered services.

(b) A local government shall apply without discrimination as to itself and to any private provider the local government's ordinances, rules, and policies, including those relating to obligation to serve, access to public rights of way, permitting, performance bonding, reporting, and quality of service.

(4) In calculating the rates charged by a local government for a covered service, the local government:

(a) Shall include within its rates an amount equal to all taxes, fees, and other

assessments that would be applicable to a similarly situated private provider of the same services, including:

(i) Federal, state, and local taxes; provided that, for income taxes, the imputed rate shall be the lowest rate that any private provider of covered service actually pays for the year prior to the year at issue, as the Louisiana Public Service Commission determines from data available to it, or zero percent, whichever is higher.

(ii) Franchise fees.

(iii) Permit fees.

(iv) Pole attachment fees.

(v) Fees similar to those described in Subparagraphs (4)(a)(i) through (iv).

(b) Shall receive a credit for all payments in lieu of taxes that it pays to the local government on revenues from the provision of the covered services.

(c) May bundle one or more covered services and offer promotional discounts or engage in other business practices on the same terms and conditions as federal and state law, including applicable rules of the Louisiana Public Service Commission, permit similarly situated private providers to bundle covered services; provided, however, that the local government shall establish its prices for covered services at levels that will, in the aggregate, over the useful life of the facilities used to provide such services, recover the sum of:

(i) The actual direct costs of providing the service.

(ii) The actual indirect costs of providing the service.

(iii) The amount determined under Subparagraph (4)(a); provided further that the local government's useful life of the facilities shall be substantially similar to the average life of the facilities used by private providers to provide covered services. Nothing in Subsection (4)(c) shall authorize local governments to engage in cross-subsidizations prohibited by this Chapter or other pricing in violation of federal or state law, including rules of the Louisiana Public Service Commission.

(5) A local government that provides covered services shall keep separate and accurate books and records of the local government's covered services, and they shall

be made available for audits of such books and records as set forth in R.S.
45:844.54(D).

§844.53. Eminent domain

R.S. 45:844.53 is all new law.

A. Subject to the applicable provisions of the Louisiana Constitution, a local government may not exercise its power of eminent domain to condemn plant, equipment, or real property of a private provider for the purpose of providing to a subscriber a covered service.

B. Nothing contained in Subsection A above shall be construed or applied in any manner to preclude a local government from exercising its power of eminent domain for any other lawful purpose other than for the purpose proscribed in R.S. 45:844.53(A).

§844.54. Enforcement and appeal

R.S. 45:844.54 is all new law.

A. Before a person that is or is likely to have a substantial interest affected by a local government's violation of this Chapter may file an action in district court for violation of this Chapter, that person shall file a written complaint with the local government in accordance with this Section.

B.(1) A local government that provides a covered service shall enact an ordinance establishing a procedure for the filing and resolution of complaints relating to the local government providing a covered service.

(2) The procedure shall:

(a) Permit any person described in this Section to file a complaint including:

(i) An individual subscriber.

(ii) A private provider that competes with the local government in the geographic boundaries of the local government.

(b) Establish an expedited process that requires within forty-five days after the date the complaint is filed:

(i) That a hearing be held, unless the parties to the proceeding waive the

1 requirement of a hearing.

2 (ii) The issuance of a final decision.

3 (c) Provide that failure to render a decision within the time allotted shall be
4 treated as an adverse decision for purposes of appeal.

5 C. Appeal of an adverse decision from the local government may be taken
6 to the district court for a de novo proceeding.

7 D. The Louisiana Public Service Commission shall, in accordance with its
8 normal rulemaking procedures, adopt rules to define and govern equitable cost
9 allocation, as well as safeguards to govern affiliate or inter-company transactions for
10 purposes of application of R.S. 45:844.52(2). Rules adopted by the Louisiana Public
11 Service Commission under authority of this Subsection D are hereinafter referred to
12 as "cost allocation and affiliate transaction rules." Cost allocation and affiliate
13 transaction rules shall not be adopted or enforced which are inconsistent with any
14 provision of this Chapter, including, but not limited to R.S. 45:844.42(7) and R.S.
15 45:844.51(C)(3). Cost allocation and affiliate transaction rules shall provide for the
16 protection of commercially sensitive marketing information disclosed by local
17 government for purposes of this Subsection D, and such protection may include, but
18 need not be limited to, the submission of commercially sensitive marketing
19 information under seal with limitations upon access to such information.
20 Commercially sensitive marketing information disclosed by local government for
21 purposes of this Subsection D shall not be a public record. Compliance with cost
22 allocation and affiliate transaction rules shall constitute per se compliance with R.S.
23 45:844.52(2).

24 (1) For covered services within the jurisdiction of the Louisiana Public
25 Service Commission, enforcement of cost allocation and affiliate transaction rules
26 shall be by the Louisiana Public Service Commission.

27 (2) For covered services which are not within the jurisdiction of the Louisiana
28 Public Service Commission, enforcement of cost allocation and affiliate transaction
29 rules shall be in accordance with the following procedure:

1 (a) A local government which provides covered services shall annually
2 engage a certified public accountant selected from a list of auditors or accountants
3 approved by the legislative auditor for an annual examination of compliance with the
4 cost allocation and affiliate transaction rules as they pertain to covered services which
5 are not within the jurisdiction of the Louisiana Public Service Commission. The
6 certified public accountant engaged under authority of this Subsection D(2)(a) is
7 hereinafter referred to as the "auditor."

8 (b) The auditor shall render a preliminary report of examination findings
9 ("preliminary report") within ninety days of engagement which shall be released to
10 the local government at an open meeting of the local governing authority and made
11 available for public inspection thereafter in accordance with the provisions of the
12 Louisiana Public Records Law. The clerk of the local governing authority shall be
13 the custodian of the auditor's preliminary report.

14 (c) For sixty days after release of the preliminary report, any interested
15 person, group of persons, or other entity shall have the right to submit written
16 comments upon the preliminary report ("public comments") to the clerk of the local
17 governing authority, who shall become the custodian of such public comments.

18 (d) Upon the lapse of sixty days after release of the preliminary report, the
19 clerk of the local governing authority shall submit the preliminary report and all
20 public comments submitted within the sixty-day comment period to the auditor and
21 to the legislative auditor.

22 (e) Not later than thirty days after receipt of the preliminary report and public
23 comments, if any, from the clerk of the local governing authority, the legislative
24 auditor, in consultation with the auditor, shall review the preliminary report and the
25 public comments, if any, and make a final determination of compliance with the cost
26 allocation and affiliate transaction rules as they pertain to covered services which are
27 not within the jurisdiction of the Louisiana Public Service Commission. If the
28 legislative auditor determines that the local government is in compliance with the
29 cost allocation and affiliate transaction rules, such determination shall be in the form

1 of a certificate of compliance signed by the legislative auditor and issued to the local
2 government. If the legislative auditor determines that the local government is not in
3 compliance with the cost allocation and affiliate transaction rules, such determination
4 shall be in the form of a final report signed by the legislative auditor and issued to the
5 local government, specifying the portions of the rules relied upon for the
6 determination of noncompliance and the reasons for such determination.

7 (f) Any interested person may seek judicial review of a determination of
8 compliance or noncompliance made by the legislative auditor under Subsection (2)(e)
9 of this Subsection D. Such judicial review shall be sought within sixty days of the
10 date of issuance of a certificate of compliance or a final report by the legislative
11 auditor. The local government shall be made defendant, and venue of a suit for
12 judicial review shall lie exclusively in the parish of domicile of the local government.
13 In any suit for judicial review, the review shall be conducted by the court without a
14 jury and shall be confined to the record of the prior proceedings before the auditor
15 and the legislative auditor, including the preliminary report and supporting
16 documentation, if any, the certificate of compliance and supporting documentation,
17 if any, the final report and supporting documentation, if any, and the public
18 comments, if any. The challenged certificate of compliance or final report of the
19 legislative auditor shall be presumed valid and correct, and the standard of review
20 shall be confined to the issue of whether the legislative auditor acted arbitrarily and
21 capriciously in the issuance of the challenged certificate of compliance or final
22 report. The burden of proof shall be upon the challenger of the certificate of
23 compliance or final report, and a reviewing court may not substitute its judgment for
24 that of the legislative auditor. If the court sustains or upholds the challenged
25 certificate of compliance or final report, the court may in its discretion assess costs
26 and reasonable attorney's fees of the prevailing party against the losing party.

27 (g) In conducting any part of the compliance audit authorized by this
28 Subsection D(2), the auditor and/or the legislative auditor may seek, request, obtain,
29 and/or utilize, and the Louisiana Public Service Commission may provide, such

1 advisory or technical assistance as the auditor and/or the legislative auditor may deem
2 necessary, convenient, or desirable. The absence of advisory or technical assistance
3 from the Louisiana Public Service Commission, or the failure or refusal of the auditor
4 and/or the legislative auditor to seek, request, obtain, or utilize such advisory or
5 technical assistance, shall not invalidate a certificate of compliance or final report and
6 shall not constitute arbitrary or capricious conduct on the part of the auditor or the
7 legislative auditor.

8 Section 2. This Act shall become effective upon signature by the governor or, if not
9 signed by the governor, upon expiration of the time for bills to become law without signature
10 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
11 vetoed by the governor and subsequently approved by the legislature, this Act shall become
12 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____